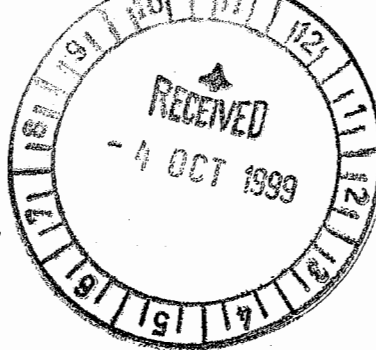




Ministry of Agriculture and Forestry
Te Manatu Ahuwhenua, Ngaherehere

Personal Comments
to Mark Neeson
6-10-99.
[Signature]



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POLICY

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MEMORANDUM

To: Larry Fergusson, MAF Policy, Barry O'Neill, MAF Biosecurity Authority, ~~George Capes~~,
Director, MAF Legal

Cc: David Bayvel, MAF Biosecurity Authority, Lin da Teoh, MAF Legal

From: Mark Neeson

Date: 1 October 1999

Subject: **CRITERIA FOR CONSIDERING APPLICATIONS TO BE AN APPROVED ORGANISATION UNDER CLAUSE 105 OF THE ANIMAL WELFARE BILL (NO.2) 1999**

- 1 Clause 105 of the Animal Welfare Bill (No.2) 1999 enables an organisation to apply to the Minister to be an approved organisation. Such approval enables it to recommend the appointment of inspectors and auxiliary officers who are then issued warrants to enforce the Bill (hopefully to receive passage shortly). Clauses 105A and 105B set out the criteria against which such an application is to be assessed.
- 2 The Bill deems the RNZSPCA to be an approved organisation. However, MAF Biosecurity Authority has received advice from Mr Neil Wells that after the Bill has received passage he intends to apply to the Minister for approval of an organisation called the "Animal Welfare Institute of New Zealand" (AWINZ).
- 3 In October 1998 MAF received some papers from Mr Wells which set out his thinking on the structure, objectives, management etc of AWINZ. The attached criteria have been drafted without reference to those papers. In August 1999 Mr Wells sent MAF some "criteria" which he suggested amplified those in the Bill. Some aspects of those criteria have been included in the proposed MAF (attached).
- 4 In order to be seen to be independent MAF Policy has, however, developed a much more detailed set of criteria. Both MAF and Mr Wells recognised that the criteria set out in the Bill would need to be expanded upon by MAF because the terms used in the Bill are quite broad, for example, "the accountability arrangements, financial arrangements, and management of the organisation..."
- 5 MAF Policy developed the attached criteria in conjunction with representatives from MAF Biosecurity Authority, Legal and the MAF Compliance Unit. We also considered criteria developed by other departments (Lottery Board, Internal Affairs, LTSA and CYPFS) which consider applications from external organisations for some type of government approval or funding, and incorporated some of that material.
- 6 An application from AWINZ can be expected within in the next two weeks if the Bill receives passage this year. Consequently, it is highly desirable that these criteria be sent to Mr Wells so that he is fully aware of the criteria against which MAF will assess the

application and advise the Minister, prior to the assessment of his application. This would enable him to include all relevant information and preclude the need for MAF to seek additional information.

- 7 The assessment of this application, and the resulting decision is significant because of Mr Well's previous interactions with MAF. Those discussions particularly focused on establishing an organisation that could enable local authority animal control staff to also become animal welfare inspectors. A trial project resulted in animal control staff currently employed by the Waitakere City Council being warranted as inspectors under the Animals Protection Act 1960. Those staff also undertake similar duties for the North Shore City under a contract between that city and the Waitakere City Council. Their warrants expire on 31 December 1999. Early resolution of this arrangement is essential for the staff and the city councils.
- 8 It is important that MAF be seen to be transparent and to give the Minister advice unaffected by past discussions and papers. For this reason the Animal Welfare Bill implementation team believes that you should jointly approve the criteria and the subsequent recommendation to the Minister.
- 9 It would, therefore, be appreciated if you could each give your concurrence to the attached criteria. David Bayvel, Linda Teoh and myself can be approached for further information if required. As I would like these criteria to be sent when the Bill is passed, hopefully later next week it would be helpful to receive your response by Wednesday 6 October.


Mark Neeson

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APPROVED ORGANISATIONS

While "organisation" has not been defined in the Bill and is not restricted to a body corporate it would seem clear that a natural person could not be an organisation. It would be open then for any body, whether a body corporate or an association of persons to be an applicant if the organisation meets the criteria in clause 105A. An organisation could include an incorporated society, charitable trust, company, state enterprise, unincorporated association, foundation, etc.

In order that an applicant can make a proper application to be Gazetted as an approved organisation the following criteria will need to be objectively determined.

Principle purpose

The principle purpose is that of promoting the welfare of animals. The object of an organisation will generally be determined by its rules, deed of trust, articles of association, statutory instrument. An organisation that does not operate with its objects could be ultra vires. However, some instruments of incorporation, such as articles of association of a company, can be so wide as to fudge the principle purpose of the organisation. It may be necessary in some cases to look beyond the stated objects.

Accountability arrangements

Accountability arrangements, financial arrangements and management of an organisation will normally be able to be determined, first by the instrument of incorporation, and secondly by quality management systems. There is not, in my view, a need to specify that an organisation must be ISO 9000 certified but there should at least be a quality management system that will facilitate audits by MAF Compliance Group.

Conflict of interest

It is the functions and powers of the organisation that will determine whether or not there is a conflict of interest. For instance, the Animal Liberation Front, because of the way it functions would probably have a conflict of interest with that of a compliance body. Any conflict of interest that may arise with an individual would not be dealt with here but rather in clause 105A(e). If an inspector were to be an active member of the ALF that would be a conflict of interest of the individual and would be dealt with under clause 106 and 108.

Employment contracts or arrangements

There is no statutory requirement that an inspector be employed by the organisation. It is likely that the majority of inspectors appointed under clause 106 will be employed in occupations other than as an inspector.

An important factor is whether an obligation to an employer may compromise the inspectors obligations as an inspector. See 108.

Not a result of 105A(e)

relevant consideration under cl 106 (e)

Q. This part
Once appointed can only review under 106(e)
108 (a) (d)
is not about the remuneration of the
members of the organisation
over the
operation &
nature
of the relationship

Also 105A(e)(i)

In the case of existing honorary inspectors some are able to attend incidents during their normal hours of employment and some are not. This will influence how a contract or arrangement is established in each individual case.

This criterion is qualified by the regard to the public interest. That will need to be assessed objectively.

Expertise and experience

The minimum technical expertise has been determined first, by the establishment of the National Certificate in Compliance and Regulatory Control (Animal Welfare), and secondly, by the stepped appointment of inspectors, i.e., 6 months, then 12 months, then 3 years. At each step an inspector's technical expertise and experience can be assessed by MAF Biosecurity.

How to determine that they will have this qualification - commit to someone by someone else?

Properly answerable

Clause 105A of the Bill as reported has included the criterion that inspectors and auxiliary officers will be "properly answerable" to the organisation.

"Properly answerable" is not defined in the Bill. Despite this, judicial interpretation is unequivocal. "Properly" means "reasonably" or "in accordance with a sound system".¹ "Answerable" is merely the equivalent of "liable".²

No - context - responsible under a system to enable the app org. to check control and deemed approved

That being the case "properly answerable" in the Bill (Act) would mean that inspectors are to be reasonably liable to their organisation in accordance with a sound system.

Evidence

Whatever is determined to be suitable evidence criteria will, on a level playing field, need to be applied to the RSPCA as a transitional approved organisation and to any new applicant, i.e. the Animal Welfare Institute of New Zealand.

An applicant would need to provide:

1. Instrument of incorporation (rules and/or deed)
2. Draft quality management system
3. Procedures for appointment of inspectors

1 and 2 should be done down to London & Assoc

selection system to be documented

¹ *Renton (GH) & Co Ltd v Palmyra Trading Corpn of Panama* [1956] 3 All ER 957 at 963

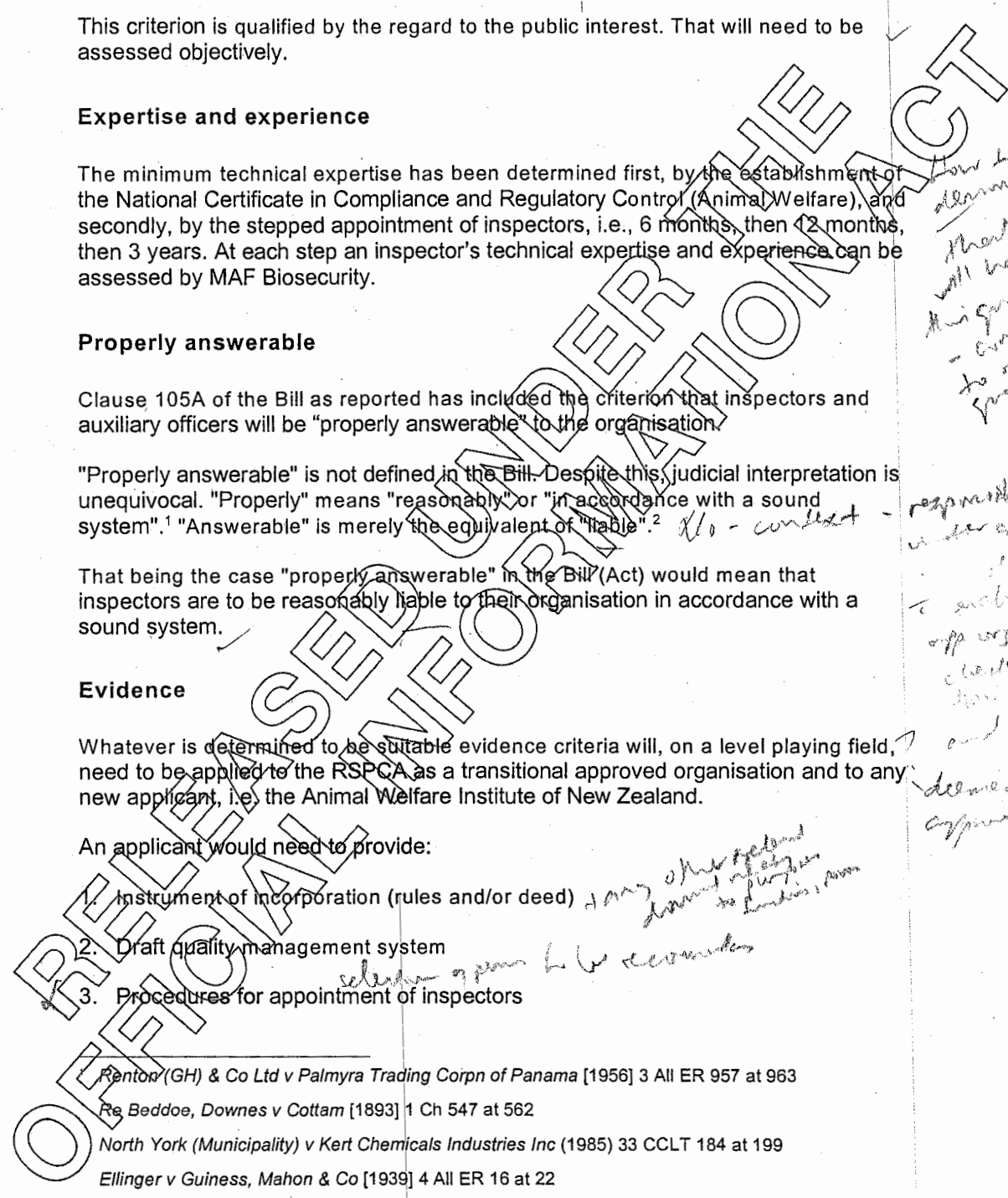
² *Re Beddoe, Downes v Cottam* [1893] 1 Ch 547 at 562

³ *North York (Municipality) v Kert Chemicals Industries Inc* (1985) 33 CCLT 184 at 199

⁴ *Ellinger v Guinness, Mahon & Co* [1939] 4 All ER 16 at 22

⁵ *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 775

⁶ *Workington Harbour & Dock Board v SS Towerfield* [1951] AC 112 at 133



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4. Draft memorandum of understanding with MAF Biosecurity *2 → 105 (A) (C6)*
5. Draft memorandum of understanding between organisation and inspector's employer *under*
6. Inspector's performance contract *of an*

*code /
product /
content
system*

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